

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

**REPLY COMMENTS OF
Rider University**

Introduction

Rider University respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.¹ Rider University supports the comments filed by the Higher Education Coalition and submits this reply to amplify several points based on its own experience and circumstances.

Brief Summary of Rider University's Position

(1) The FCC should make clear that the private networks operated by colleges, universities, and research institutions are exempt from CALEA; (2) Rider University's record of prompt compliance with law enforcement requests, and a complete absence of any law enforcement surveillance requests, demonstrate that existing procedures are more than adequate to ensure prompt compliance with any

¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sep. 23, 2005) ("*Order*").

lawful surveillance request by a law enforcement agency; and (3) applying CALEA to Rider University's broadband network would impose significant costs that would impede Rider University's ability to deliver on its core responsibilities to students and society as a whole.

Discussion

1. The FCC Should Clarify That Higher Education Networks Are Exempt from CALEA.

Currently, broadband networks owned and operated by higher education and research institutions are not subject to CALEA because the statute exempts "equipment, facilities, or services that support the transport or switching of communications for private networks." 47 U.S.C. § 1002(b)(2)(B). Although the Commission acknowledged in the *Order* that private educational networks are exempt from CALEA, it introduced ambiguity by stating: "To the extent . . . that [such] private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA" *Order* at ¶ 36, n.100. Rider University's connection to the public Internet is via the NJEDge.net, a broadband statewide network designed specifically to enhance the teaching, research and public service missions of New Jersey's colleges and universities. We at Rider are concerned that we could be required under the *Order* to "support" such a "connection" and thus become subject to CALEA.

The Commission should clarify that only commercial network operators are covered by the language in footnote 100, in light of the clear statutory exemption of

private network operators. Alternatively, the Commission should invoke its discretionary authority under Section 102(8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with the forthcoming assistance-capability requirements. Such an exemption is necessary to remain faithful to congressional intent and to avoid imposing unnecessary burdens on colleges, universities, and research institutions.

Contrary to the suggestion by the Department of Justice that “no exemptions are appropriate based on the current record,” DOJ Comments at 11, the Higher Education Coalition has defined a narrow class of private network operators that should be exempt from CALEA for all the reasons contained in the Coalition’s comments and in these reply comments. The absence of existing compliance standards should not be an argument for postponing exemption determinations, but instead the Commission should make these determinations now. Because the Commission has established an 18-month compliance deadline, Rider University must begin planning *now* to set aside funds for possible CALEA compliance; thus, our request is far from being premature: *an exemption for higher education is necessary now.*

2. Rider University’s Experience with Law Enforcement Requests Demonstrates the Absence of Any Need to Impose CALEA Requirements on Higher Education Networks.

- Rider University has not received any surveillance requests from law enforcement under the CALEA regulation for at least 10 years.

- Rider University has efficiently, effectively, and with a high degree of cooperation complied with all other requests from law enforcement personnel.

The lack of surveillance requests and Rider University's history of compliance and cooperation with law enforcement serve to demonstrate that existing procedures are more than adequate to ensure compliance with lawful surveillance requests.

Imposing burdensome new assistance-capability requirements under CALEA on Rider University is simply not necessary to serve the interests of law enforcement.

3. A Broad Application of CALEA Would Impose Significant Burdens on Rider University and Divert Funds from Its Critical Educational Mission.

As cited above, Rider University does not believe that CALEA applies to us under the plain terms of the statute and under the most reasonable reading of the *Order*. Furthermore, if the Commission were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such as Rider University's must comply with some or all assistance capability requirements, this type of ruling would impose significant and unwarranted burdens.

If Rider University were required to modify its network in order to allow the DOJ or FCC to intercept communications by particular users at points *within* the network, our current network switching equipment would have to be replaced and reconfigured. Since compliance standards do not exist yet, we can only hazard a

guess as to what types of equipment might need to be replaced and at what expense. Our best, good-faith estimate is that a complete network replacement and redesign would cost a minimum of two million dollars. In order to compensate for this cost and support the requirements of the *Order*, Rider University also anticipates it would need to hire additional personnel, consider cuts in other programs, and increase tuition.

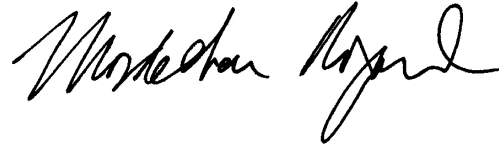
In short, if the FCC were to apply CALEA broadly to higher education networks — contrary to the text of the statute — such a ruling would impose significant burdens that far outweigh its putative benefits. The Commission accordingly should exempt higher education institutions and research networks from CALEA, if indeed it considers them subject to the assistance-capability requirements in the first place.

Finally, if the FCC applies CALEA to private educational networks at all, it should modify the *Order and apply it at most* to the Internet connection facilities at the edge of the network, for the reasons stated by the Higher Education Coalition. In addition, as proposed by the Coalition, any requirement should be phased in over a five-year period as existing equipment is replaced in the normal course of events.

Conclusion

Rider University respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mordechai Rozanski". The signature is fluid and cursive, with the first name "Mordechai" being more prominent than the last name "Rozanski".

Dr. Mordechai Rozanski
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